

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD L. FLEMING,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 1:21-349
	:	
v.	:	(MANNION, D.J.)
	:	(CARLSON, M.J.)
KELLY YATES, et al.,	:	
	:	
Defendants	:	

ORDER

Presently before the court is the report and recommendation (“Report”) of Magistrate Judge Martin C. Carlson filed on April 19, 2021, ([Doc. 16](#)), which recommends that the plaintiff Ronald L. Fleming’s (“Fleming”) Amended Complaint, ([Doc. 10](#)), be dismissed in part, and for a preliminary injunction, ([Doc. 13](#)), be denied. Fleming filed objections to the Report on May 6, 2021, which the court notes were untimely filed.¹ ([Doc. 18](#)).

When parties fail to file timely objections to a report and recommendation, the Federal Magistrates [Judges’] Act does not require a district court to review the report before accepting it. [Thomas v. Arn, 474 U.S. 140, 149 \(1985\)](#). As a matter of good practice, however, the court should

¹ The Middle District of Pennsylvania Local Rule 72.3 provides that a “party may object to a magistrate judge’s proposed ... recommendations ... within fourteen (14) days after being served with a copy thereof.” [M.D. Pa. Local Rule 72.3](#).

“satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P.72\(b\)](#), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); [M.D.Pa. Local Rule 72.3](#).

In his Report, Judge Carlson conducted a review of the plaintiff’s *pro se* Amended Complaint in accordance with [28 U.S.C. §1915\(e\)\(2\)\(B\)\(ii\)](#). The Report observes that Fleming, in most instances, has failed to correct the deficiencies in his prior pleadings. As similarly found in Fleming’s prior pleadings, the Report notes that many of the averments in the Amended Complaint do not conform to [Federal Rule of Civil Procedure 8](#), in that they are “unintelligible, inscrutable, and lack coherent factual averments.” ([Doc. 16 at 9](#)). The Report indicates the only claims which Fleming has alleged, though barely, are excessive force claims against defendants Brandon Black (“Black”) and C.O. Kerwin (“Kerwin”). ([Doc. 16 at 8](#)). Accordingly, the Report

recommends dismissal of the Amended Complaint with the exception of the excessive force claims made against defendants Black and Kerwin.

Additionally, because Fleming invites the court to enjoin his pending criminal case, and because all three factors of the *Younger* Abstention Doctrine apply here, the Report recommends that the court abstain from addressing his request for injunctive relief. Further, Judge Carlson observes that, insofar as Fleming seeks to bring a civil rights action premised on claims of malicious prosecution, the Amended Complaint fails as a matter of law because Fleming's criminal case has not been resolved in his favor given that it remains pending. Finally, the Report advises, to the extent Fleming seeks damages from a state agency in this federal civil rights suit, such claims for damages fail as a matter of law as they are barred by both the Eleventh Amendment and cases construing 42 U.S.C. §1983.

The court has reviewed all pertinent filings and finds no clear error with regards to Judge Carlson's well-reasoned and well-supported Report. The court has also reviewed Fleming's objections to the Report and finds the objections unpersuasive or inscrutable. In light of this, the court will overrule the objections and adopt the Report in its entirety as the decision of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) Fleming's objections to the Report, (Doc. 18), are

OVERRULED;

(2) The Report of Judge Carlson, (Doc. 16), is **ADOPTED**

IN ITS ENTIRETY;

(3) Fleming's Amended Complaint, (Doc. 10), is

DISMISSED, with the exception of the excessive force claims against defendants Black and Kerwin;

(4) Fleming's motion for a preliminary injunction, (Doc.

13), is **DENIED**; and

(5) The matter is **REMANDED** to Judge Carlson for further proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: December 9, 2021

21-0349-02